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April 14, 2000

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**VIA HAND DELIVERY**

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

**Re: Arbitration Between BellSouth Telecommunications and  
Time Warner Telecom of the Mid-South, L.P. Pursuant to the Telecom Act of  
1996**

TRA Docket No. 99-00797

Dear Mr. Waddell:

Enclosed, please find Time Warner Telecom of the Mid-South L.P.'s proposed draft of the Final Order of Arbitration Award in the referenced docket. The document is also being provided to you on a disk, which we have been advised should be directed to the legal department, c/o Stephanie Tisdale.

If you have any questions or concerns with regard to this order, please do not hesitate to contact me.

Very truly yours,

**FARRIS, MATHEWS, BRANAN,  
BOBANGO & HELLEN, P.L.C.**

*Charles B. Welch, Jr.*  
Charles B. Welch, Jr.

CBWjr:ccw

cc: Carolyn M. Marek

Stephanie Tisdale

Bennett Ross-Via Facsimile

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POSTED  
4-17-00

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:  
ARBITRATION OF THE  
INTERCONNECTION AGREEMENT  
BETWEEN BELL SOUTH  
TELECOMMUNICATIONS, INC.  
AND TIME WARNER TELECOM OF  
THE MID-SOUTH, L.P. PURSUANT  
TO SECTION 252(b) OF THE  
TELECOMMUNICATIONS ACT OF 1996**

**Docket No. 99-00797**

**(PROPOSED) FINAL ORDER OF ARBITRATION AWARD**

*ju* This matter came before the Tennessee Regulatory Authority (the "Authority") upon the petition of BellSouth Telecommunications, Inc. ("BellSouth") for arbitration of an interconnection agreement with Time Warner Telecom of the Mid-South, L.P. ("Time Warner") pursuant to Section 252 of the Federal Telecommunications Act of 1996. This Final Order of Arbitration Award embodies the decision made by Chairman, Melvin J. Malone, Director, H. Lynn Greer, Jr., and Director, Sara Kyle, acting as Arbitrators, during the Public Arbitration Conference held Tuesday, March 14, 2000, and constitutes the valid, binding and final decision of the Arbitrators.

**STATEMENT OF THE CASE**

BellSouth filed its Petition for Arbitration with the Authority on October 15, 1999, requesting the Authority to arbitrate one unresolved issue resulting from negotiations between the parties in an effort to enter into a voluntary interconnection agreement. On November 9, 1999, Time Warner filed its response to BellSouth's petition.

PROPOSED  
4-17-00

The Authority's associate counsel, Gary Hotvedt, was appointed Hearing Officer and a Pre-Arbitration Conference was held on December 7, 1999. The following appearances were entered:

**Guy M. Hicks, Esquire, BellSouth Telecommunications, Inc., Rm. 2101, 333 Commerce Street, Nashville, Tennessee 37201, appearing on behalf of BellSouth.**

**Charles B. Welch, Jr., Esquire and Jon F. Minkoff, Esquire, Farris, Mathews, Branan, Bobango & Hellen, 618 Church Street, Suite 300, Nashville, Tennessee 37219, appearing on behalf of Time Warner.**

The parties agreed to be bound by the Arbitration Rules 1220-5-1 through 1220-5-3, Rules of Practice, and procedures governing arbitrations under Section 252 of the Federal Telecommunications Act of 1996. Additionally, the parties agree that the Arbitrators take administrative notice of the records developed in Docket No. 99-00377, Petition by ICG Telecom Group, Inc., for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc., pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, and TRA Docket No. 99-00430, Petition for Arbitration of ICG Deltacom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996. The sole issue presented for arbitration by the parties was:

**What should be the appropriate definition of local traffic for the purposes of the parties' reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act?**

## **POSITIONS OF THE PARTIES**

Time Warner contended that calls to Internet service providers (“ISPs”) are local traffic for purposes of reciprocal compensation and cited three (3) main reasons for its position:

1. Time Warner network facilities handle carrier-to-carrier calls to ISPs exactly the same way that they handle other local calls;
2. The FCC stated that ISP traffic should be treated as local; and
3. Numerous other state commissions examining the issue have decided that calls to ISPs should be treated as local for purposes of reciprocal compensation.

BellSouth urged the Authority to rule that calls to ISPs were not local traffic for purposes of reciprocal compensation and cited four (4) primary arguments in support of its position:

1. Reciprocal compensation is not the appropriate method to use to recover the costs associated with the handling of ISP traffic;
2. The payment of reciprocal compensation for ISP-bound traffic is bad public policy;
3. It is inconsistent with cost causation principals for Time Warner to recover costs associated with ISP-bound traffic from anyone other than the ISPs themselves; and
4. ISP-bound traffic is interstate in nature, and as such, should be regulated by the FCC.

## DELIBERATIONS

The Arbitrators considered the issue based upon the petition, the briefs submitted by the parties, the evidence and the testimony developed in both TRA Docket Nos. 99-00430 and 99-00377, and the FCC declaratory ruling, In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, CC Doc. No. 96-98, and Notice of Proposed Rulemaking in Intercarrier Compensation for ISP Bound Traffic, CC Doc. No. 96-68. Specifically, the Arbitrators noted language from paragraph 25 of CC Doc. No. 96-98 as follows:

**Even when parties to interconnection agreements do not voluntarily agree on an intercarrier compensation mechanism for ISP-bound traffic, state commissions nonetheless may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic.**

. . .

**While to date the commission has not adopted a specific rule governing the matter, we note that our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in a separate context of reciprocal compensation, suggest that such compensation is due for that traffic.**

and paragraph 26:

**A state commission's decision to impose reciprocal compensation obligations in an arbitration proceeding, or a subsequent state commission decision, that those obligations encompass ISP-bound traffic, does not conflict with any commission rule regarding ISP bound traffic.**

The Directors further discussed that BellSouth proposed no alternative method of intercarrier compensations for ISP traffic.

## **ORDERED**

Based upon the foregoing, it is the order of the Arbitrators that reciprocal compensation is the appropriate interim method to be used to recover the costs associated with the delivery of ISP-bound traffic pending completion of the FCC's rule making with regard to this traffic.

## **CONCLUSION**

The Arbitrators state that the decision made on March 14, 2000, is considered rendered when voted upon that day. The foregoing filed Order of Arbitration and Award reflects resolution of the issue presented by the parties for arbitration. The Arbitrators concluded that the resolution of this issue complies with the provisions of the Federal Telecommunications Act 1996, and is supported by the record in this proceeding.

TENNESSEE REGULATORY AUTHORITY,  
BY ITS DIRECTORS ACTING AS ARBITRATORS.

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MELVIN J. MALONE, CHAIRMAN

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H. LYNN GREER, JR., DIRECTOR

\_\_\_\_\_  
SARA KYLE, DIRECTOR

ATTEST:

\_\_\_\_\_  
K. DAVID WADDELL  
EXECUTIVE SECRETARY

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